IN THE HIGH COURT OF BOMBAY AT GOA

CRIMINAL MISC. APPLICATION NO. 105 OF 2007
IN
STAMP NUMBER MAIN NO. 1209 OF 2007

STATE THROUGH PUBLIC PROSECUTOR ... Applicant
Versus
SHRI AIRES RODRIGUES, RIBANDAR, GOA. ... Respondent

Mr. C.A. Ferreira, Public Prosecutor for the Applciant.
Mr. A.F. Diniz, Advocate for the Respondent.

Coram:- N. A. BRITTO, J.

Date:- 19th July, 2007

P.C.:

Heard learned Public Prosecutor on behalf of the applicant and the learned Counsel on behalf of the respondent. By application dated 3/05/2007, the applicant seeks leave to condone the delay of fifty days in filing an application for leave to appeal. The respondent having alleged malafides on behalf of the applicant, the police inspector has filed an affidavit in rejoinder and it is stated that right from the Public Prosecutor to all the authorities, everybody was of the opinion that an appeal be filed against the order dated 5/12/2006 of the learned Ad-hoc Additional Sessions Judge.

From the application filed it can be seen that the date for delivery for collection of certified copy was given as 15/12/2006. The OPINION by the learned Public Prosecutor was given on 31/01/2007 and thereafter, the Law Secretary approved the same on 20/02/2007 but wrongly forwarded the file to the District Magistrate who returned it on 5/04/2007 and it is here that it appears there was some delay on the part of the District

Magistrate. The file was again sent to the Home Department on 19/04/2007 and came back to the Public Prosecutor on 27/04/2007. On behalf of the applicant reliance has been placed on 'State of Nagaland V/s. Lipok Ao and Ors.' ((2005) 3 SCC 752) wherein the Apex Court has held that the expression sufficient cause appearing in section 5 of the Limitation Act, 1963 should be considered with pragmatism in a justice-oriented approach rather than the technical detection of sufficient cause for explaining every day's delay. The Apex Court has also stated that certain amount of latitude is permissible having regard to procedural red tape in the decision-making process of the Government as the State is an impersonal machinery working through its officers or servants and as such cannot be put on the same footing as that of an individual and it is the public interest which suffers if the appeals by the State are lost because of such default.

Considering the law laid down by the Apex Court and the facts stated on behalf of the applicant and reproduced herein above, in my view, this would be a fit case to condone the delay.

Application, therefore, is granted and the delay of fifty days is condoned.

N. A. BRITTO, J.

NH